Battelle Memorial Institute *and* Pacific Northwest Regional Council of Carpenters Local 2403, Petitioner and Hanford Atomic Metal Trades Council, Intervenor. Case 19–RC–135888

February 18, 2016

ORDER DENYING REVIEW

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND MCFERRAN

The Petitioner seeks to represent a unit of carpenters and millwrights employed by the Employer at its Pacific Northwest National Laboratory facility, and historically represented by the Intervenor in a multicraft unit. The Regional Director evaluated the petition under the analytical framework in *Mallinckrodt Chemical Works*, 162 NLRB 387 (1966), and dismissed the petition. (The Regional Director's Decision and Order is attached as an appendix.) The Petitioner filed a request for review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel. Having carefully considered the Petitioner's Request for Review of the Regional Director's Decision and Order we find that it presents no compelling reasons to reconsider well-established policies under *Mallinckrodt*. Nor has the Petitioner established that the Regional Director's decision raises a substantial question of law or policy because it departs from officially reported Board precedent, or that the decision contains clear, substantial factual errors prejudicial to the Petitioner.[1] Accordingly, the Request for Review is denied as it raises no substantial issues warranting review.

Our dissenting colleague would grant review in part because the Board recently affirmed a Regional Director's decision granting a petition for a severance election in *Electric Boat Corp*., Case 01–RC–124746 (2015) (not reported in Board volumes).[2] Contrary to our colleague, *Electric Boat* is distinguishable and does not control the issue presented here. Rather, the differing conclusions in these two cases stem from the consistent application of established Board law to significantly different factual situations.

In evaluating a petition seeking to sever a craft or departmental unit from a previously represented larger unit, the Board balances the special interest of the petitioned-for employees in seeking separate representation with the "interest of the employer and the total employee complement in maintaining the industrial stability and resulting benefits of an historical" unit, and "the public interest and the interests of the employer and the [incumbent] union in maintaining overall plant stability in labor relations and uninterrupted operation of integrated . . . facilities." *Mallinckrodt*, above at 392; accord: *Metropolitan Opera Assn., Inc.*, 327 NLRB 740, 752 (1999). In assessing these competing interests, the Board weighs all relevant factors on a case-by-case basis, and applies the same principles and standards to all industries. *Mallinckrodt*, above at 398. Relevant factors include, but are not limited to, factors that would also be relevant to the distinct question of whether employees in the petitioned-for-unit would constitute an appropriate craft unit as an initial matter under, e.g., *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1994), and *MGM Mirage d/b/a The Mirage Casino-Hotel*, 338 NLRB 529 (2002) (relied upon by our dissenting colleague).

We agree with our colleague's general proposition that it is sometimes appropriate to include separate-but-related craft employees in a single unit where the question before us is the composition of an appropriate unit within a previously-unrepresented workforce. See *Mirage Casino-Hotel*, above at 529 (finding appropriate combined unit of carpenters and upholsterers as an initial unit determination). But where, as here, the question is whether a group of employees may be severed from an *existing* collective-bargaining unit, the petitioner faces a higher bar because, as stated above, the interest of the employees in the petitioned-for unit in having an opportunity to vote for separate representation must be balanced against a number of other interests, including the interest of employees *excluded* from the petitioned-for-unit in maintaining the bargaining strength inherent in the historic unfractured larger unit. See *Kaiser Foundation Hospital*, 312 NLRB 933, 936 & fn. 21 (1993) (*Mallinckrodt* places a "heavy burden" on the party seeking severance: "the Board is reluctant, absent compelling circumstances, to disturb bargaining units established by mutual consent where there has been a long history of continuous bargaining").

[1] See Board's Rules and Regulations, Sec. 102.67(c).

[2] The Regional Director here considered and distinguished the Regional Director's decision in *Electric Boat*. The Petitioner filed its Request for Review in this case while *Electric Boat* was pending before the Board on review. A party in *Electric Boat* requested that the Board consider, and the Board did consider, the Regional Director's decision in this case as part of its review of the Regional Director's decision in *Electric Boat*.

Here, the Regional Director applied the *Mallinckrodt* factors to determine that severance was not warranted.[3] The Regional Director found (and it is undisputed) that the Intervenor is—and has been for decades[4]—the exclusive collective-bargaining representative of the Employer's employees in the existing overall unit.[5] The Regional Director further found that: (1) the petitioned-for employees do not constitute a homogeneous group because carpenters in the petitioned-for unit perform work that is distinct from, and does not overlap with, the work performed by the millwrights in the petitioned-for unit;[6] (2) the carpenters and millwrights in the petitioned-for-unit do not have a separate identity since they are not administratively organized and supervised separately from other employees in the existing unit;[7] and (3) the carpenters and millwrights normally work as members of integrated teams composed of employees from multiple crafts who work together to complete specific assigned tasks.[8] The Petitioner's Request for Review does not persuade us that the Regional Director clearly and prejudicially erred in making these or any other substantial factual findings. Nor does the Request for Review compel us to reconsider the well-established policies underlying our analysis in this area. We conclude that the Petitioner has not presented compelling reasons to grant its Request for Review, which is, accordingly, denied.

Dated, Washington, D.C. February 18, 2016

Mark Gaston Pearce, Chairman

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MISCIMARRA, dissenting.

This case involves an unusual situation that has several moving parts. It centers on a multiple-union entity, the Hanford Atomic Metal Trades Council (Council), which negotiates a site-wide collective-bargaining agreement (the CBA) at the Pacific Northwest National Laboratory (the Laboratory). The Laboratory is operated by a contractor, Battelle Memorial Institute (Battelle). The sitewide CBA is entered into between Battelle and the Council, and it covers all represented craft and trade union positions at the Laboratory. Various local unions—each affiliated with the Council—provide day-to-day representation of employees within different trades or crafts; and the subsidiary local unions typically negotiate separate agreements specifying the wages, benefits, and

[3] Under *Mallinckrodt*, relevant factors include: (1) collective-bargaining history; (2) whether the petitioned for unit consists of a distinct and homogeneous group; (3) the extent the petitioned-for employees have maintained a separate identity within the overall unit; (4) the degree of integration of the production process; (5) the qualifications of the union seeking severance; and (6) the pattern of collective bargaining in the industry.

[4] We do not find that the Petitioner has been prejudicially affected by any error the Regional Director may have made regarding the precise number of decades that the Intervenor has been the exclusive collective-bargaining representative.

[5] Because the Intervenor, not the Petitioner, has been the historic exclusive collective-bargaining representative of the Employer's employees, including those in the petitioned-for-unit, dismissing the petition here does not, contrary to our dissenting colleague, "requir[e] employees to leave their existing union and be represented . . . by different unions." Our colleague objects that the Petitioner "performed the essential function of representing [the carpenters and millwrights] in Appendix A negotiations, in grievance-arbitration matters, and in all other day-to-day labor relations matters." But our colleague fails to acknowledge, as the Regional Director found, that the Intervenor has always played a role in negotiating the various Appendix A subagreements and has exercised final authority over their approval. And, through a grievance committee, the Intervenor has controlled the advancement of grievances that could not be resolved informally by local stewards on the shop floor at the first stage of the grievance-arbitration procedure. These aspects of the Intervenor's representation of *all* of the unit employees have not changed. Nor, again contrary to our colleague, does our application of established doctrine in this case depart from precedent. As the Regional Director recognized, the Board has previously dismissed petitions filed by labor organizations that have represented subgroups within an overall unit represented by a single, different, exclusive collective-bargaining representative. In *Metropolitan Opera Assn.*, above, for example, the Board dismissed a severance petition where the petitioner had historically represented a subgroup of choristers within an overall unit represented by the Musical Artists. And, in *Houdaille Industries, Inc., Houdaille-Duval-Wright Co. Division*, 183 NLRB 678, 679 (1970), the Board dismissed a petition by an Operating Engineers local that had represented a subgroup of employees by agreement with the certified exclusive collective-bargaining representative of the overall unit, effectively requiring a group of heavy equipment operators and oilers who had previously been represented by Operating Engineers to be represented by Teamsters. Finally, we note that the Petitioner has identified no factual basis in the record, either to the Regional Director or in its Request for Review, to substantiate its speculative concerns—shared by our dissenting colleague—that the Intervenor will fail adequately to represent the interests of the employees in the petitioned-for unit in the future.

[6] By contrast, the record in *Electric Boat* established that virtually all of the employees in the petitioned-for unit there—whether designated "carpenter," "joiner," "joiner-upholsterer," or "carpenter-diver"—were trained to perform the two jobs that comprised the majority of the carpenters' work: constructing scaffolding and installing anechoic exterior-hull coating on the employer's submarines.

[7] By contrast, approximately 95 percent of the petitioned-for carpenters in *Electric Boat* were administratively organized in a single separate department with common supervision.

[8] By contrast, employees in the petitioned-for-unit in *Electric Boat* performed their discrete work separately from, albeit in close proximity to, other employees.

jurisdictional rules pertaining to the employees who perform work within the jurisdiction of each subsidiary local union. (For ease of reference, I use the term "subsidiary local union" to describe each Council-affiliated local union, and "subsidiary agreement" to describe an agreement negotiated by a subsidiary local union.) Each subsidiary agreement is listed in "Appendix A" to the sitewide CBA, which makes each subsidiary agreement part of the sitewide CBA. For many years, the sitewide CBA has covered carpenters and millwrights; Pacific Northwest Regional Council of Carpenters Local 2403 (Carpenters Local 2403) has been their subsidiary local union and has negotiated the applicable subsidiary agreement covering them.

This is where things get even more complicated. The Council is affiliated with the AFL–CIO Metal Trades Department (AFL–CIO or Metal Trades Department). Carpenters Local 2403 is affiliated with its parent union, the United Brotherhood of Carpenters and Joiners (Carpenters International). In 2001, the Carpenters International withdrew from the AFL–CIO. For a number of years, this withdrawal did not affect the representation of carpenters and millwrights at the Laboratory, whose subsidiary local union continued to be Carpenters Local 2403. However, in 2014, three events occurred: (i) the Council—based on the withdrawal of the Carpenters International from the AFL–CIO—expelled Carpenters Local 2403 from the Council; (ii) the Council advised the Laboratory's carpenters that, instead of being represented by Carpenters Local 2403, their subsidiary local union would become a local union affiliated with the Sheet Metal Workers; and (iii) the Council similarly advised the Laboratory's millwrights that they would no longer be represented by Carpenters Local 2403 and their subsidiary local union would become a local union affiliated with the International Association of Machinists. At the Laboratory, the carpenters and millwrights have not always had a smooth relationship with the Sheet Metal Workers and the Machinists. To the contrary, Carpenters Local 2403 had many serious jurisdictional disputes with the Sheet Metal Workers and the Machinists regarding work performed by carpenters and millwrights. Obviously, the Sheet Metal Workers and the Machinists local unions cannot be faulted for representing the interests of their respective members in any jurisdictional disputes with the carpenters and millwrights. Nonetheless, the events described above have required carpenters and millwrights to accept representation by subsidiary local unions that have opposed their jurisdictional interests in the past.

This brings us to the representation petition filed in the instant case by Carpenters Local 2403, which seeks, unsurprisingly, to have a representation election conducted in a bargaining unit consisting of the carpenters and millwrights—the very employees that Carpenters Local 2403 previously represented as their subsidiary local union. The Regional Director dismissed the petition. Pursuant to Section 102.67(c) of the Board's Rules and Regulations, Carpenters Local 2403 requests Board review of the Regional Director's decision. My colleagues deny the Request for Review. I would grant review, for three reasons.

First, the Regional Director's dismissal of this case is contrary to prior decisions by a Regional Director and the Board in *Electric Boat Corp.*, Case 01–RC–124746 (granting review August 14, 2014, and affirming the Regional Director's decision April 30, 2015) (hereinafter *Electric Boat*).

Second, the Regional Director's factual findings are based on a lengthy, complex, and extremely detailed record, and the pending Request for Review raises substantial questions as to whether they are clearly erroneous.

Third, this case presents a substantial question of public policy, which is whether the Board should dismiss a petition filed by a local union that was the petitioned-for employees' bargaining representative for decades, where those employees, without the opportunity to vote in an election or otherwise express their consent or opposition, have been directed to accept representation by different local unions that, in the past, have opposed their jurisdictional interests.

Discussion

Requests for review are governed by Section 102.67(c) of the Board's Rules and Regulations. Section 102.67(c) states:

> The Board will grant a request for review only where compelling reasons exist therefor. Accordingly, a request for review may be granted only upon one or more of the following grounds:
>
> (1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a *departure from, officially reported Board precedent*.
>
> (2) That *the Regional Director's decision on a substantial factual issue is clearly erroneous* on the record and such error prejudicially affects the rights of a party.
>
> (3) That the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.
>
> (4) That there are *compelling reasons for reconsideration of an important Board rule or policy*.

(Emphasis added.) At present, the Board is only considering whether or not to grant the Request for Review filed by Carpenters Local 2403. Consequently, it is premature to address the issues that the Board would need to carefully evaluate in a decision on the merits after granting review, and I do not prejudge these issues. However, I believe my colleagues incorrectly decide to deny review, which means the Board will not examine the issues raised here. Contrary to my colleagues, I believe the Regional Director's decision gives rise to substantial issues that warrant granting Carpenters Local 2403's Request for Review.

1. Departure from *Electric Boat.* As noted above, *Electric Boat* is the Board's first and thus far only decision dealing with the representational consequences of a Carpenters local union's expulsion from an AFL–CIO Metal Trades Department affiliate. In *Electric Boat*, the Regional Director (Region 1) directed an election in a separate unit of carpenters and joiners at the United States Navy submarine shipyard in Groton, Connecticut. As in this case, the petitioning Carpenters local union had recently been expelled from a multiunion group—similar to the Council in this case—affiliated with the Metal Trades Department. The Board granted the multiunion group's request for review on August 14, 2014, and on April 30, 2015, affirmed the Regional Director's decision and direction of election. By contrast, the Regional Director here, addressing virtually identical facts, has dismissed the petition for an election.

In the instant case, the Regional Director issued his decision on October 16, 2014, 6 months *before* the Board's decision on review in *Electric Boat*. In dismissing Carpenters Local 2403's election petition, the Regional Director stressed that Region 1's decision in *Electric Boat* had no precedential value because it was still before the Board on review. However, as noted above, the Board issued its decision on review in *Electric Boat* on April 30, 2015, finding that the Regional Director had properly directed an election, contrary to the Regional Director's dismissal of the petition here. Consequently, there *now* is Board precedent that establishes the appropriateness of conducting an election in circumstances that are materially indistinguishable from the instant case.

The Regional Director here also reasoned that *Electric Boat* was factually distinguishable because the carpenters and joiners there worked under separate supervision. The Board, however, has never held that evidence of common supervision, by itself, defeats a separate craft unit. To the contrary, supervision is just one factor among several others that may bear on the appropriateness of a separate craft unit. See, e.g., *The Mirage Casino-Hotel,* 338 NLRB 529, 533 fn. 20 (2002). Moreover, in other respects it appears that this case is indistinguishable from *Electric Boat*. For example, like the carpenters and millwrights in the instant case, the carpenters and joiners in *Electric Boat* worked throughout the site in close proximity to other craft employees, and the work of the carpenters and joiners in *Electric Boat* was extensively integrated with the work of the other crafts; and these facts did not defeat the appropriateness of a separate unit of carpenters and joiners. Similarly, in *Electric Boat* as here, the employees at issue performed almost all of the tasks that were within the petitioning union's jurisdiction. Strict adherence to craft jurisdictional lines has been recognized by the Board as an especially important factor. See, e.g., *Mirage Casino-Hotel,* supra, 338 NLRB at 533 (noting importance attached to jurisdiction in seminal Board cases). I believe these considerations warrant a conclusion that the Regional Director's finding that *Electric Boat* should be distinguished from this case gives rise to substantial issues that warrant review.

Moreover, *Electric Boat* and this case are likely to be merely the first two of many cases raising similar questions based on the expulsion of Carpenters local unions from multiunion entities, where the multiunion entity functions as a sitewide representative, and subsidiary local unions perform day-to-day representation and negotiate subsidiary agreements. This type of bargaining structure, with representational responsibilities allocated between a multiunion entity and subsidiary local unions, including Carpenters locals, is common in many Federal defense and energy facilities. The existence of conflicting decisions in this area will create uncertainty for employees, unions, employers and Regional Directors, which I believe the Board should endeavor to avoid.

2. Potential Clearly Erroneous Factual Findings. Section 102.67(c)(2) of the Board's Rules and Regulations states review should be granted if a Regional Director's "decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party." The Regional Director's decision in the instant case is based on an extremely detailed, extensive record, and I believe at least two factual findings by the Regional Director give rise to substantial questions as to whether they are clearly erroneous and prejudicial to Carpenters Local 2403.

First, the Regional Director found that carpenters and millwrights are separate crafts, which warrants their being separately represented by different subsidiary local unions, the Sheet Metal Workers and Machinists, respectively. Certainly, there is a long history in the United States—and in the work setting here—of disputes over the precise jurisdictional lines between different craft unions. However, it is also undisputed that at the Labor-

atory, the carpenters and millwrights, for decades, were represented by a single subsidiary local union, Carpenters Local 2403. More generally, the Carpenters International was founded in the late 19th century, and throughout most of its history, its local unions have represented carpenters, joiners *and* millwrights, all of whom are often simply termed "carpenters" in industry parlance. Nor is there substantial evidence that carpenters and millwrights in the maintenance industry previously have been grouped in separate units.[1] Further, many other well-established unions represent separate-but-related craft employees, including (i) the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers; (ii) the Operative Plasterers and Cement Masons International Association; and (iii) the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry. Thus, I believe the Regional Director's finding that carpenters and millwrights constitute separate crafts that warrant separate bargaining units raises a substantial question as to whether it is clearly erroneous, given the record evidence in this case and our country's long history of having a single union represent separate-but-related crafts in a single bargaining unit.

Second, I believe that similar questions are raised by the Regional Director's finding that the work of carpenters and millwrights is not sufficiently skilled to be a "true craft unit" under *Burns & Roe Services Corp.,* 313 NLRB 1307 (1994). This appears to be contradicted by the Council's website, which states that each of its 15 affiliates "represents a distinct group of craft employees at Hanford." Although the Regional Director relied heavily on evidence that there were no carpenter or millwright apprenticeship programs at the Laboratory, there is no evidence that other crafts at the Laboratory have apprenticeship programs, so this would defeat "craft" status for all employees represented by different Council-affiliated subsidiary local unions at the Laboratory. Moreover, the Board has made clear that formal apprenticeship is not a prerequisite for the skilled status necessary for a craft. See, e.g., *Mirage Casino-Hotel*, supra, 338 NLRB at 533 (discounting absence of apprenticeship program); *Wal-Mart Stores, Inc.*, 328 NLRB 904, 907 (1999) (same). There is also substantial record evidence suggesting that the work of carpenters and millwrights requires significant skill.[2]

3. Fundamental Policy Considerations. I also believe that Board review is appropriate based on Section 102.67(c)(4) of the Board's Rules and Regulations, which states review should be granted when there are "compelling reasons for reconsideration of an important Board . . . policy." The Act states that the Board's fundamental responsibility, when making bargaining unit determinations, is to "decide *in each case*" what bargaining unit will "*assure to employees the fullest freedom* in exercising the rights guaranteed by this Act."[3] In the instant case, as described above, the carpenters and millwrights had decades-old representation by Carpenters Local 2403. Without an election, based on an intra-union matter (specifically, the Carpenters International's withdrawal from the AFL–CIO), the carpenters and millwrights were subdivided into separate groups and assigned to be represented by different subsidiary unions, the Sheet Metal Workers and Machinists, respectively.[4]

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[1] *Electric Boat* dealt with "carpenters" and "joiners," and the petitioned-for unit included both carpenters and joiners.

[2] It is undisputed that the carpenters and millwrights fabricate unique items that are each designed to order by Laboratory's nuclear scientists. Although the record does not elaborate on the nature of these items (perhaps for compelling security reasons), the testimony appears to leave no question that they require skill and precision.

[3] Sec. 9(b) (emphasis added). The legislative history of this language in Sec. 9(b) demonstrates that it resulted from extensive deliberation. See *Macy's, Inc*., 361 NLRB No. 4, slip op. at 25–27 (2014) (Member Miscimarra, dissenting).

[4] In reaching his decision, the Regional Director purported to follow *Mallinckrodt Chemical Works,* 162 NLRB 387 (1966). In finding that the Regional Director properly followed the *Mallinckrodt* factors, my colleagues overlook that we have *never* before sanctioned an application of those criteria that required employees to leave their existing union and be represented, against their wishes, by different unions. The majority states that the Council was the "exclusive collective-bargaining representative" of the Laboratory's carpenters and millwrights and that such status remains unchanged. But that is *not* correct and that mistake is the fatal flaw in the majority's analysis. The Council was the exclusive representative of carpenters and millwrights only in negotiations over the CBA. Carpenters Local 2403 performed the essential function of representing them in Appendix A negotiations, in grievance-arbitration matters, and in all other day-to-day labor relations matters during the CBA term. To the extent that the Council played any role in those critical functions, its role was ancillary and formulaic. Further, *Metropolitan Opera Assn., Inc.*, 327 NLRB 740 (1999), and *Houdaille Industries, Inc. Houdaille-Duval-Wright Co. Division*, 183 NLRB 678 (1970), provide no support for the majority's position. The former involved an attempt to create a smaller unit represented by the same union that had always represented the employees in question, and the latter was an instance in which the certified bargaining representative had expressly designated another union as the representative of a smaller employee group. Neither case remotely resembled what we have here—compelling employees to leave their chosen union for another union to which they object. Moreover, my colleagues ignore the undisputed evidence that the new unions that the carpenters and millwrights are being compelled to accept have historically taken jurisdictional positions adverse to their most fundamental job opportunity interests. That alone is more than sufficient evidence of prejudice and conflict of interest. Thus, forcing carpenters and millwrights to be represented by new unions is, in fact, legally unprecedented and hardly preserves a stable labor relations status quo for *Mallinckrodt* purposes. To the contrary, such a dictatorial result squarely conflicts with the free-choice provisions of the Act.

Moreover, although the new subsidiary unions cannot be faulted for this, it appears that in the past, the jurisdictional interests of carpenters and millwrights at the Laboratory had been opposed by the Sheet Metal Workers and Machinists.

Especially because the Board and a different Regional Director, in *Electric Boat*, supra, resolved these issues in a manner contrary to the Regional Director's decision here, I believe this case gives rise to substantial questions regarding an "important Board . . . policy." Moreover, the Act precludes employer recognition or Board certification of unions that do not have majority support.[5] See, e.g., *The American Bottling Co., Inc. d/b/a Dr. Pepper Snapple Group*, 357 NLRB 1804, 1812–1813 (2011). As the Supreme Court stated in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969): "The Board itself has recognized, and continues to do so here, that secret elections are generally the most satisfactory—indeed the preferred—method of ascertaining whether a union has majority support." Id. at 602 (footnote omitted).

Conclusion

As indicated above, I do not reach or decide the issues that would be appropriate for the Board to resolve in the instant case if we were to grant the request for review filed by Carpenters Local 2303. However, the request for review raises issues that have been resolved in a contrary manner by the Board and a different Regional Director, the decision we are asked to review involves important factual determinations regarding what constitutes a cognizable "craft" and whether two related crafts should or must be represented by different unions in separate bargaining units, and whether employees can be required to have different union representation in the circumstances presented here, where the Board will not permit the employees to decide for themselves whether they wish to be represented by their traditional local union instead. These are each important issues, and when considered together, they constitute especially compelling reasons to grant review.

For the foregoing reasons, I respectfully dissent from my colleagues' denial of the request for review.

Dated, Washington, D.C. February 18, 2016

Philip A. Miscimarra, Member

[5] The Regional Director's decision states that the Council was certified as the bargaining representative in 1949. The record does not support that, and it is implausible in any event because the Council did not have a bargaining relationship with the Laboratory until 1965. Presumably, the Council's representative status in overall contract negotiations was a matter of consent among the craft unions involved.

NATIONAL LABOR RELATIONS BOARD

APPENDIX

DECISION AND ORDER

I. SUMMARY

The Employer operates the Pacific Northwest National Laboratory ("PNNL), a United States Department of Energy facility located in Richland, Washington. The Employer recognizes the Intervenor (or "HAMTC") as the collective bargaining representative of approximately 240 employees employed at PNNL. Historically HAMTC has consisted of 13 separate local trade unions of which these employees are members. Earlier this year, after a lengthy dispute, HAMTC removed the Petitioner from the HAMTC organization. Since the Petitioner's removal (which the parties at hearing referred to as a disaffiliation), the approximately 21 carpenters and millwrights employed by the Employer have been represented by other HAMTC member unions.

Petitioner filed the instant petition seeking to sever the Employer's carpenters and millwrights, eight job classifications in all, from the existing HAMTC unit and to represent them in a separate unit. However, HAMTC opposes the petition on the basis the current multi-craft bargaining unit is an integrated whole with a long stable and productive bargaining history. The Employer takes no position on the appropriateness of the petitioned-for unit.

I have carefully reviewed and considered the record evidence, and the arguments of the Petitioner and the Intervenor at both the hearing and in their post-hearing briefs. Consistent with the Intervenor, I find that based on the evidence and the Board's craft severance standard as articulated in *Mallinckrodt Chemical Works,* 162 NLRB 387, 393 (1967), the unit sought by Petitioner cannot be properly severed from the existing unit as a separate craft unit.

Below I have set forth the record evidence relating to the factors the Board considers with respect to petitions for craft severance. Following that is an analysis of the *Mallinckrodt* standard, as well as my application of that standard to the record before me. In conclusion, I have set forth my Order dismissing the instant petition and address the procedures for requesting review of this decision.

II. RECORD EVIDENCE

A. BACKGROUND

PNNL is part of the Hanford site, a sprawling Department of Energy complex located on the Columbia River near Richland, Washington. Thousands of researchers and scientists are employed at the PNNL campus, working in numerous buildings and laboratories. In addition to PNNL, the Hanford site contains a separate decommissioned Department of Energy plutonium processing facility, where significant waste management and environmental restoration work is performed by numerous contractors. HAMTC has also had long stable collective-bargaining relationships with most of these other contractors.

HAMTC, an affiliation of trade unions, was certified as the exclusive collective bargaining representative of various employees at the Hanford site in 1949. HAMTC has negotiated successive collective bargaining agreements with the various contractors at Hanford in the subsequent 65 years. The Employer has operated PNNL since 1965, and the Employer and HAMTC have been party to numerous collective bargaining agreements during that time, the most recent of which was effective from 2010 to 2013. The Employer and HAMTC are currently engaged in successor contract negotiations. Thus, no party raises a contract as a bar to further processing of the instant petition.

During HAMTC's 65 years of representation, labor relations at the Hanford site have been generally uneventful, with minimal history of strikes, lockouts, or other work stoppages. There have been two strikes during Battelle's operation of PNNL, but the last one occurred almost 40 years ago in 1976. During the same period, HAMTC and the Hanford contractors have negotiated numerous collective bargaining agreements

Until June 1, 2014, Petitioner was one of the 13 affiliated local unions that constituted HAMTC.[2] At that time, HAMTC disaffiliated Petitioner, the culmination of a 15-year dispute involving Petitioner and Intervenor's respective parent organizations. Following disaffiliation HAMTC directed that carpenters and millwrights would be represented by the Sheet Metal Workers and Machinists respectively.

Until June 2014, Petitioner had 77 members, all of whom are employed at the Hanford site. Of these members, 21 are employed by Battelle at PNNL and are the subject of the instant petition. The remainder of the carpenters and millwrights represented by HAMTC are employed by other contractors on the Hanford site. Thus, the instant petition does not involve carpenters or millwrights working for these other contractors.

B. EMPLOYEES AT ISSUE

1. True Craft or Functionally Distinct Department

Petitioner seeks to sever 21 carpenters and millwrights from an existing bargaining unit consisting of tradespersons in 13 separate crafts, approximately 240 employees total. This existing unit of HAMTC represented employees is largely located in the Employer's Maintenance and Fabrication Services department ("maintenance department") and is generally referred to by the parties as a maintenance unit.

Maintenance department employees perform traditional maintenance work, as well as fabrication work unique to PNNL. Traditional maintenance work involves repairs, inspections, and preventative maintenance. Fabrication involves creating specialized "widgets" for the PNNL researchers; unique items needed by the researchers, but that cannot simply be purchased.[3] Instead, widgets must be designed and built by the maintenance department employees in close conjunction with the scientific staff.

Within the maintenance department the Employer recognizes the separate craft jurisdictions of each HAMTC union. Accordingly the carpenters and millwrights have exclusive jurisdictions and perform all work within those two separate jurisdictions. Specifically, carpenters build scaffolding, shipping crates, and widgets made of wood, plastic, and Plexiglas. They also perform roofing work, work with doors on tasks such as lock installation and repair and weather-stripping, and open all shipping crates. Millwrights are responsible for machine alignment, as well as the maintenance and inspections of pump shafts, motors, hoisting and rigging. Metal work in general is divided by the gauge of the metal, with millwrights handling metal below a certain gauge and sheet metal workers handling metal above a certain gauge. Millwrights are also responsible for filter changes in PNNL's specialized air filtration system.

One implication of the strict observation of jurisdictional lines is that the work of each employee is almost exclusively limited to their trade; few tasks have not been claimed as exclusive by one trade or another. The maintenance department manager estimated that an employee in the maintenance department, regardless of trade, spends approximately 90 percent of their work day exclusively performing craft specific work.

Jurisdictional lines have some bearing on the tools and equipment used by maintenance department employees. The maintenance department maintains a primary shop and several satellite shops at the PNNL campus. Two of the satellite shops contain tools frequently used by carpenters, such as band saws and Plexiglas heaters. The evidence is in dispute

[2] In addition to Petitioner, member unions include: International Brotherhood of Boilermakers, Local 242 ("Boilermakers"); International Brotherhood of Electrical Workers, Locals 77 and 984 (collectively "IBEW" or "Electricians"); International Union of Operating Engineers, Local 280 ("Operating Engineers"); International Union of Painters and Allied Trades, Local 437 ("Painters"); International Association of Machinists, Local 1951 ("Machinists"); United Association of Plumbers and Pipefitters, Local 598 ("Pipefitters"); International Association of Insulators, Local 120 ("Insulators"); International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 14 ("Ironworkers"); Sheet Metal Workers International Association, Local 55 ("Sheet Metal Workers"); United Steelworkers, Local 12-369 ("Steelworkers"); and International Brotherhood of Teamsters, Local 839 ("Teamsters").

[3] Because fabrication work is varied and the designed items are unique, witnesses at hearing and the parties on brief simply refer to the fabricated items collectively as "widgets." Thus, the term is used in the same manner in this Decision

regarding whether any of these tools are craft specific. Several tools, such as a band saw, are described by some witnesses as craft specific, in that a carpenter is the only craft to use a blade for cutting wood on a band saw. However, carpenters are not the only craft with the skill, knowledge, or need to use a band saw, as a different craft may use a band saw with a different blade for cutting metal.

Carpenters and millwrights receive some training not provided to other crafts, based on their exclusive jurisdiction over these tasks. Carpenters are the only craft that receives scaffolding and locksmith training. Millwrights are the only trade that receives laser alignment training, and training related to manipulator arm installation and maintenance.

Organizationally, the maintenance department is divided into 5 work groups, with each work group consisting of between 2 and 4 work teams. Nine of the 11 work teams consist of employees in multiple crafts, with varying degrees of mixing. The petitioned-for carpenters and millwrights are located on 6 work teams, which also include electricians, teamsters, pipefitters, painters, and machinists. As a percentage of their work teams, carpenters and millwrights together make up between 5 percent (a single millwright in the 17 person "Physical Sciences Facilities 1" work team) and 31 percent (7 carpenters and millwrights on the 22 person "RCHN1" work team).

The work teams include location- and purpose-based teams. Location based work teams are assigned to a certain building and perform most of the maintenance work at the assigned location. The Physical Sciences Facilities 1 work team, mentioned above, performs most of the maintenance in the Physical Sciences Facilities 1 building. Teams with a specific purpose perform one specific task throughout the PNNL campus. For example, the Custodial and Floor Services work team will perform all carpet replacement, regardless of location at PNNL. Each work team is supervised by a team leader, who in turn reports to a group lead, who reports to the maintenance department manager.[4]

At the beginning of each day, the maintenance department manager, the group leads, and the team leaders meet to distribute work assignments for the day. The team leaders then take these assignments to their respective team's report location and distribute assignments to the individual employees. The record indicates that normally assignments require multiple crafts to complete a task. Who will perform what work is a decision that is made throughout the assignment process, with the maintenance department manager, the group leads, and the team leaders all making these decisions in the assignment process. An assignment may designate a "lead craft," but such a designation is not required.

The Employer performs all hiring for the maintenance department; union hiring halls are not utilized. The Employer does not require applicants to have completed an apprenticeship for their craft, and the Employer does not provide an apprenticeship program. However, after hire the Employer provides all new maintenance department employees core training related to working at the Hanford site. As described above employees receive some limited craft specific training as well.

2. History of Collective Bargaining of Employees Sought to be Represented

a. Contract Bargaining

The Employer and HAMTC have negotiated multiple collective bargaining agreements covering employees' terms and conditions of employment over the last 50 years. These agreements address employees' terms and conditions of employment as a single group, without reference to craft, although in areas, such as wages, craft differences are recognized. The agreement also contains an "Appendix A" specific to each craft. This appendix contains the job descriptions for the classifications in each craft, and a description of the craft's jurisdiction. When bargaining on a successor contract is set to begin, the affiliate unions have the ability to request their Appendix A be re-opened if they have craft specific issues to address.

It is undisputed that when Appendix A bargaining occurs, both a HAMTC representative and a representative of the germane member union meet with the Employer's representative. However, Petitioner and HAMTC disagree regarding the relative roles of the union representatives at the table. Petitioner maintains that its representative negotiates the agreement, while the HAMTC representative is present as a passive note taker or observer. HAMTC asserts it negotiates any changes, and the craft representative is merely present to assist. However, the record reveals that final authority rests with HAMTC rather than with a member union over a final Appendix A agreement. Further, HAMTC reviews negotiated appendices to ensure that no conflicts exist relative to the other trades' respective work jurisdictions. Regardless of the specific dynamics at the bargaining table, no changes in a craft's Appendix A takes place until the appendices are incorporated into a successor collective bargaining agreement, which is ratified as a whole.

According to Petitioner's business representative, Petitioner re-opened its respective Appendix A in both 2005 and 2010, proposing additional training, a new procedure for transferring between teams, increased pay, and changes in overtime procedures. There is no assertion that these proposals were outside the bounds of acceptable Appendix A bargaining, or that they were somehow inappropriate proposals. However, it also appears from the record the Employer rejected the proposals outright, or said it would take them under consideration; regardless, no such changes took place. A successor collective bargaining agreement was executed in each instance; the lack of agreement on the Appendix A applicable to carpenters did not prevent an overall agreement. There is no evidence in the record of any individual affiliate union entering into any contract, memorandum of understanding, side agreement, or other binding agreement with the Employer separate from HAMTC.

[4] The parties stipulate that the work group team leaders are supervisors within the definition of § 2(11) of the Act. It also appears that the parties have historically excluded the work group team leaders from the existing unit.

Under the collective bargaining agreement between the Employer and HAMTC, each HAMTG affiliate union is entitled to a chief steward. Further, when successor contract bargaining begins, HAMTC creates a bargaining committee consisting of the chief steward of each affiliate union. Each affiliate union is entitled to a chief steward, not each craft. Because Petitioner has historically represented two separate crafts, carpenters and millwrights, these two crafts have had a single representative at the bargaining table.

HAMTC and the Employer are currently bargaining for a successor agreement, and presently, disaffiliation has not modified HAMTC's bargaining committee. At the time bargaining began, prior to disaffiliation, Petitioner's chief steward was placed on the bargaining committee. To date he has retained this position. However, it does not appear to be in dispute that in the next round of collective bargaining, this will not be the case because HAMTC will have one less representative, and the carpenters and millwrights will be represented by the Sheet Metal Workers and Machinists respectively. However, this is not to say that the Petitioner's current chief steward or some other carpenter and/or millwright could not be selected as a future chief steward.

b. Grievance Handling

In addition to chief stewards, the Employer also recognizes primary stewards and shop stewards. As noted above, chief stewards have a role at the bargaining table; shop stewards are primarily involved in grievance processing. Within the ranks of the shop stewards, a single steward in each craft is designated the primary steward. The record suggests the primary steward has greater responsibility for jurisdictional grievances, but the nature and extent of this responsibility are not fully detailed in the record.

Step 1 in the grievance process involves the shop steward and front-line supervisor attempting a resolution on the shop floor. If step 1 does not resolve the dispute, a grievance is reduced to writing by the shop steward and submitted to HAMTC's grievance committee, step 2 in the grievance process. HAMTC's grievance committee consists of a representative from each affiliate union. The committee determines whether a grievance is advanced to arbitration on behalf of HAMTC. Affiliate unions apparently have some ability to advance grievances to arbitration if they pay the legal fees and costs, but the specifics of this ability to arbitrate independently of HAMTC are not fully detailed in the record.

Since disaffiliation, Petitioner's former chief steward has become a shop steward with and a member of the Sheet Metal Workers, although he continues to be recognized as the primary steward for the carpenters. The pre-disaffiliation primary steward of the millwrights is similarly still recognized as the millwright's primary steward, and he has become a member of the Machinists. In regard to what changes have resulted, the Petitioner's former chief steward testified that prior to disaffiliation he could decide whether to take a grievance to arbitration, assuming Petitioner paid the associated costs. He maintains that as a primary or shop steward he no longer has that ability, as he must submit any grievances to the HAMTC committee and can only move grievances to arbitration with HAMTC approval.

c. Jurisdictional Disputes and other Intra-Union Matters

Each member union in HAMTC has the ability to file a grievance over a jurisdictional dispute. It is not clear from the record whether only a chief steward can file a jurisdictional grievance, or merely the practice has developed whereby the chief steward usually handles jurisdictional grievances. Sheet Metal Workers Chief Steward Kurt Watts testified that the chief steward "...kind of makes the decision on what the craft is going to do," on a jurisdictional grievance, but did not reference any rule or bylaw that dictated this approach. As noted at other places in the record, the primary stewards have a role in the filing and processing of jurisdictional grievances.

Once filed, the collective bargaining agreement establishes a separate procedure for grievances addressing jurisdictional disputes. At step 2, jurisdictional grievances are referred to the Council Grievance Committee, a committee with a member for each affiliate union. If the dispute cannot be resolved by the committee, the involved unions may advance the dispute to arbitration, if they choose to incur the associated legal fees and costs.

With disaffiliation, Petitioner no longer has a representative on the Council Grievance Committee. Petitioner's witnesses assert this is a particularly damaging change, as the affiliate unions to which the carpenters and millwrights have been assigned, Sheet Metal Workers and Machinists respectively, are the entities with which they had the most jurisdictional disputes.

The record contains examples of these disputes. Carpenters and sheet metal workers have had jurisdictional disputes in the past over the assembling of metal furniture and installation of metal items on walls, such as metal trim. In 1990 and 2012 the metal on walls issue progressed to arbitration. Petitioner argues the net effect of eliminating the ability to independently arbitrate jurisdictional disputes and removal from the Council Grievance Committee will result in a breakdown of craft jurisdiction lines.

Petitioner provided a few examples of such a breakdown in the record. Specifically, Petitioner maintains that following disaffiliation, it was removed from the welding pool, eliminating work from carpenters and millwrights. The record reveals that correspondence from HAMTC regarding disaffiliation does clearly state that references to Petitioner shall be removed from the welding pool documentation. However, multiple witnesses testified that the Employer no longer utilizes a welding pool. Further, no carpenter or millwright testified that they had ever performed work as part of the welding pool or that their work had changed as a result of disaffiliation.

Another example of the jurisdictional concerns raised by Petitioner is demonstrated by a jurisdictional grievance filed by millwrights in July of 2014, after disaffiliation. Both the primary steward for the millwrights, and the machinist staff assistant testified regarding the handling of the dispute. All parties agree that the primary steward for the millwrights filed a grievance over pipefitters assembling and disassembling A-frame

gantry cranes. Prior to reaching the Grievance Council at step 2, the Machinist staff assistant met the Pipefitters to attempt to resolve the dispute and did so, reaching a resolution that stated ". . . if there was a [sic] A-frame to be erected only [to] be used by the pipefitters with no mechanical devices trolleys etc. you would assemble and disassemble if for your craft or membership only." The Machinist staff assistant takes the position that this resolution concedes nothing to the Pipefitters, and that the Machinists fully protected the millwrights' jurisdiction. The primary steward for the millwrights asserts that this resolution conceded significant millwright work to the Pipefitters but neither the primary steward nor Petitioner provided details or documents establishing the nature and extent of millwright work purportedly conceded by the Machinists.

Petitioner also had a seat on HAMTC's executive board while a member union, that is no longer the case following the disaffiliation. The record does not establish the impact of this lost seat.

3. Separate Identity

The collective bargaining agreement between the Employer and HAMTC establishes almost all of the bargaining unit employees' terms and conditions of employment, outside of the limited issues addressed in each craft's respective Appendix A. As such, all bargaining unit employees share the same insurance and retirement benefits, vacation and holidays, working hours and shift schedules, and are subject to the same work rules. Seniority is calculated in the same manner for all employees, although each craft maintains its own seniority roster.

Transfers between crafts occur, but are not common. The Employer's labor relations manager estimated one employee per year, in the last decade, had permanently transferred between crafts, although three permanent transfers have taken place already in 2014.

There is no contention that the carpenters and millwrights have had a previous opportunity to obtain separate representation. The record reveals and I take administrative notice that a petition was filed with this Region in Case 19–RC–14231 to sever a craft from a HAMTC bargaining unit at the Hanford site in 2002. There, the Region issued a decision denying the severance. I note that Case 19–RC–14213 involved a different unit, employer, and petitioner but did involve HAMTC as the Intervenor.

4. Degree of Integration of the Employer's Production Processes

The Employer's maintenance department's multi-craft teams operate together to accomplish tasks, but do so along jurisdictional lines. The record contains several examples of multiple crafts working together to accomplish a task, including door installation, fire inspections, and office relocations.

A door installation begins with a single work order. On site, a teamster delivers the door to the location where it will be installed. A carpenter will then un-box the door from its packaging, and based on the type of door a carpenter or other craft would perform the installation. A carpenter would then perform any finishing tasks such as installing a lock or weather-stripping.

When a fire inspection is required, a single work order is created. A carpenter first inspects fire doors and walls. The work order is then passed to a pipefitter, who inspects the sprinkler heads and then passes the work order to a sheet metal worker to inspect the fire dampers.

The Teamsters' chief steward described his work installing office furniture on the multi-craft "Grounds, Relocation, & Receiving" work team. He is one of three employees regularly assigned to perform this installation work, along with another teamster and a carpenter. The carpenter rotates to the Grounds, Relocation, & Receiving work team from another work team. However, the parties did not provide testimony or documents detailing the regularity or frequency of temporary transfers among the various teams in the existing unit. As described by the chief steward, he and another teamster transport the materials to the installation location where a carpenter assembles the furniture. Other crafts, such as electricians, are called from other work teams on an as needed basis to complete the installation.

The record also contains more general testimony regarding the frequency of multiple crafts performing tasks together. The IBEW chief steward described how it was frequently necessary for him to have a machine operator perform a lock-out/tag-out procedure before the chief steward works on power equipment. A carpenter acknowledged that he frequently worked on service orders that required him to work with the painters, teamsters, pipefitters, electricians and other crafts assigned to his work team. Two other chief stewards, a sheet metal worker, and a millwright, both testified they also work regularly, at times daily, with other crafts on their work teams to complete tasks.

Although the Employer explicitly recognizes jurisdictional lines in its collective bargaining agreement with HAMTC, the line is not absolute: The parties have negotiated a "Craft Alignment Program" that recognizes some basic efficiencies given the close proximity of employees in separate crafts working on multi-craft work teams. Under this program, an employee in one craft can provide some very limited assistance to another craft on a single task. The example described in the record is of a teamster delivering items to a carpenter who was building something. Under these circumstances, it is permissible for the teamster to brace something or to essentially assist the carpenter to assemble or make a connection without infringing on the carpenter's jurisdiction.

5. Qualifications of the Union Seeking Severance

It is not disputed that Petitioner is affiliated with the Pacific Northwest Regional Council of Carpenters and the United Brotherhood of Carpenters, labor organizations that have extensive experience representing carpenters and millwrights in maintenance units.

There is no dispute that throughout its existence, Petitioner has been an active labor organization, conducting regular meetings and electing officers. Prior to disaffiliation, employees' dues were deducted by the Employer and remitted to Petitioner, who in turn paid a per capita amount to HAMTC. Following disaffiliation, the carpenters and mill-

wrights were required to pay dues or fees to other HAMTC member unions as a condition of employment. Consistent with this change, employees completed new dues deduction authorizations, and the Employer now remits their dues to the Sheet Metal Workers or Machinists, who in turn pay the per capita to HAMTC.

Petitioner does acknowledge that carpenters and millwrights represent distinctive and separate crafts, although Petitioner maintains the two crafts are "brother crafts" historically jointly represented by Petitioner.

6. Industry Pattern of Collective Bargaining

Intervenor asserts the proper industry for comparison is other Department of Energy laboratories. The record contains collective bargaining agreements between contractors and metal trades councils at Department of Energy laboratories in Oak Ridge, Tennessee, Amarillo, Texas, and Albuquerque, New Mexico. At each of these operations, multiple crafts are represented by a single multi-craft bargaining unit for all maintenance personnel.

In response, Petitioner asserts that the Department of Energy laboratories referenced above are more involved in national defense research as opposed to the research conducted at PNNL. However, Petitioner's assertion is not supported by the record as Petitioner did not submit documents or testimony detailing the full nature and extent of all operations performed by the Employer at PNNL or at the other comparator laboratories.

Petitioner also raises a number of differences in the substance of HAMTC's collective bargaining agreements with the Employer ("HAMTC agreements") and the collective bargaining agreements in the record covering other laboratories. Petitioner specifically points out that the agreements Intervenor placed in the record differ from the HAMTC agreements in regard to wages, job classifications, employer organization, bumping rights, steward assignment, and the process for establishing jurisdictional lines and resolving jurisdictional disputes.

Petitioner further asserts the proper industry for comparison is instead marine maintenance in the Pacific Northwest. Petitioner placed a number of labor agreements between affiliates of Petitioner and employers in the marine maintenance and shipbuilding industry, and specifically asserts the Washington State Ferries maintenance unit in particular is the best comparison, on the basis that the carpenters had been represented by a metal trades council, but have been represented in the two most recent bargaining cycles by an affiliate of Petitioner. However, I note that the Washington State Ferries' labor agreements, like the HAMTC proffered industry labor agreements, similarly contain significant substantive differences in terms and conditions of employment from those present in the HAMTC agreements.

III. ANALYSIS

A. CRAFT SEVERANCE STANDARD

In allowing craft severance, whereby a group of employees in a separate and distinct craft leave a larger, existing bargaining unit, the Board balances the interest of the larger group of employees in maintaining the stability of labor relations, and the benefits of an historical plant-wide bargaining unit, against the interest of a portion of that group in having the freedom of choice to break away from the historical unit. *Mallinckrodt Chemical Works,* 162 NLRB 387, 392 (1966). Although it balances these interests, the Board has not allowed severance lightly, as the party seeking severance clearly bears a "heavy burden." *Kaiser Foundation Hospitals,* 312 NLRB 933, 935 fn. 15 (1993). In placing this heavy burden on a petitioner, the Board has explained it "is reluctant, absent compelling circumstances, to disturb bargaining units established by mutual consent where there has been a long history of continuous bargaining, even in cases where the Board would not have found the unit to be appropriate if presented with the issue ab initio." *Id.* at 936.

The Board in *Mallinckrodt* outlined the factors to be considered when determining the issue of craft severance: 1) whether the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen or a functionally distinct department; 2) the collective-bargaining history of the employees in the petitioned-for unit related to those employees, and whether the existing patterns of bargaining result in stable labor relations and whether that stability will be upset by the end of the existing patterns of representation; 3) the extent the petitioned-for unit has maintained a separate identity during its inclusion in the overall unit; 4) the degree of integration of the Employer's production processes; 5) the qualifications of the Union seeking severance; and 6) the pattern of collective bargaining in the industry. *Mallinckrodt* at 397.

The heavy burden applied to a party seeking craft severance by the Board is reflected in its decisions following *Mallinckrodt.* In *Kaiser Foundation Hospitals,* petitioner sought to sever a group of skilled maintenance employees from a unit of nonprofessional employees. *Id.* at 933. Applying the *Mallinckrodt* factors, the Board found the petitioned-for employees were skilled maintenance employees separately supervised from the other bargaining unit employees, yet had not maintained a separate identity, given that terms and conditions of employment, including hours of work, holidays, health and pension benefits, vacation, seniority, and leave were uniformly applied across the unit. *Kaiser Foundation Hospital,* at 935–936. The Board noted the long history of bargaining, 40 years, in the larger unit, with only two strikes occurring in that time, and further noted the "predominately stable" nature of this past representation. *Id.* The Board concluded craft severance was not appropriate and specifically noted that it traditionally declined to sever a group of maintenance employees from an existing production and maintenance unit in the face of substantial bargaining history on a plant-wide basis. *Id.* at 935.

The Board also addressed its craft severance principles in *Metropolitan Opera Ass'n.,* 327 NLRB 740 (1999). There, petitioner sought to sever one group of performers, choristers, from a historical unit consisting of several groups of performers, stage managers, stage directors, and choreographers. *Id.* at 740. In dismissing the petition, the Board specifically noted that while the incumbent union had historically repre-

sented the existing/larger unit, it had also allowed a chorus committee to negotiate issues specific to the choristers but only as an authorized arm of the incumbent union. *Id.* The Board ultimately held that admitted differences in functions, skills, and compensation did not "constitute a compelling argument to disturb a 30-year history of continuous bargaining and successful representation" in the broader unit. *Id.*

I now turn to an analysis of the instant record and the craft severance factors considered by the Board when making determinations in cases of this nature.

B. CRAFT SEVERANCE FACTORS

1. True Craft or Functionally Distinct Department

A true craft unit is one consisting of a distinct and homogenous group of skilled journeymen craftsmen, with skill acquired by a substantial period of apprenticeship or its equivalent, together with their apprentices and/or helpers. *Burns & Roe Services Corp.,* 313 NLRB 1307, 1308 (1994). In practice, this requires analyzing the existence of formal training and apprenticeship programs, functional integration, overlap of duties, whether assignments are based on need or made along craft lines, and common interests in wages and other terms and conditions of employment. *Id.*

Petitioner asserts the carpenters and millwrights constitute a true craft because they are a distinct and homogenous group of skilled journeymen craftsmen. However, there is no contention they are organized in a functionally distinct department. Functional integration and a common interest in wages and other terms and conditions of employment are addressed in detail below where the record reveals a lack for support for the instant petition. Thus, I turn to whether the remaining considerations regarding this factor, including the existence or lack of a formal training and apprenticeship program, and whether assignments are based on need or made along craft lines, are sufficient to establish the carpenters and millwrights as a true craft.

The Employer performs all hiring; there is no contention that a union hiring hall or some other mechanism gives Petitioner or Intervenor any control over applicants or the qualifications of these applicants. Minimal qualifications certainly exist, but the minimum requirements are of the Employer's creation. The Employer does not require carpenter or millwright applicants to have completed an apprenticeship for their craft, to have or maintain journeyman status, and the Employer does not provide an apprenticeship program. While employees receive limited craft specific training after hire, for example the scaffolding and locksmith training provided to carpenters, that training is not extensive enough to be considered an alternative to an apprenticeship. Moreover, the Employer does not employ any "apprentices" or "helpers" in the existing unit.

Petitioner's argument in favor of the petitioned-for unit's true craft status is based on the Employer's recognition of jurisdictional lines. While the Employer does not require formal training or an apprenticeship, it clearly recognizes craft jurisdiction in making work assignments. The record evidence as a whole, from witness testimony to the language of the most recent collective bargaining agreement, clearly reveals that jurisdiction is guarded by all of the HAMTC trades. This has a significant impact on existing unit employees' work, as the maintenance department manager testified 90 percent of an existing unit employee's day is devoted to the exclusive work of the employee's trade. That said, while work assignments are made with respect to craft lines, the Employer does not organize itself along craft lines. Rather, the record establishes that the Employer's maintenance department consists of work teams that are multi-craft, especially as it applies to multi-craft teams that include carpenters or millwrights.

I also agree with Intervenor that, in function, there is no basis for finding carpenters and millwrights are a "distinct and homogenous group" separate from the other trades. Petitioner's arguments, which are focused on the exclusive work of each trade, highlight the differences between the two groups of employees it now seeks to represent in a separate unit. It is undisputed that the carpenters and millwrights have a history of joint representation. Yet in regard to their work, they are either two parts of a large functionally integrated department, or two distinct crafts Petitioner seeks to sever into one unit. Under this factor, there is no basis in the record for finding, and Petitioner does not contend, that carpenters and millwrights somehow constitute a single craft.

While the Employer certainly respects jurisdictional lines, this alone is not synonymous with belonging to a true craft unit. Here the Employer does not utilize a hiring hall, offers no apprenticeship program, does not utilize apprentices or helpers, and does not require completion of an apprenticeship or any sort of journeyman status as a condition of employment. Further, as discussed in the following sections, the Employer's multi-craft teams are functionally integrated, and share many of the same terms and conditions of employment with the other trades.

In light of the above and the record as a whole, I find that the petitioned-for unit is neither a true craft unit, for the purposes of severance, nor a functionally distinct department. Accordingly, this factor weighs against Petitioner meeting its heavy burden of demonstrating craft severance is appropriate.

2. History of Collective Bargaining of Employees Sought to be Represented

There is no evidence that HAMTC has been lacking in its representation of the bargaining unit as a whole, or the carpenters and millwrights specifically, during its lengthy 50-year tenure. The history of HAMTC and the Employer during this period, two strikes in 50 years, is analogous to the history in *Kaiser Foundation,* where two strikes occurred in 40 years of representation. In that decision, the Board described the relationship as "predominately stable," and cited the long history of stable and productive labor relations as a primary reason not to disturb the existing bargaining relationship. *Kaiser Foundation,* 312 NLRB at 936. Similarly, in *Metropolitan Opera,* the Board accentuated the importance of the existing bargaining relationship as the critical aspect of the unit's labor history. *Metropolitan Opera Ass'n.,* 327 NLRB at 740.

The role played by the chorus committee in *Metropolitan Opera* is analogous to the historic role Petitioner has played

in Appendix A bargaining. There, as here, a representative of a part of a bargaining unit bargained with the employer on concerns specific to the choristers as a representative of the certified collective bargaining representative. Here, there is also little doubt that Petitioner historically has been provided an opportunity equal to that of any other affiliate union to represent the interests of its members.

This raises a factual consideration not present in *Kaiser Foundation* and *Metropolitan Opera:* disaffiliation. If the 50-year history of stable and productive labor relations between HAMTC and the Employer weighs heavily against Petitioner's argument, the question then is whether the changes since disaffiliation are sufficient to make reliance on this history misplaced.

Petitioner argues that following disaffiliation, carpenters and millwrights "lost" a chief steward, and accordingly a seat on the HAMTC bargaining committee, grievance committee, and executive board. However, this is not an accurate description of what has transpired, as carpenters and millwrights have not been left unrepresented, but are now represented by the Sheet Metal Workers and Machinists. As such, they still have a chief steward, but it is a chief steward that is shared with the existing employees in these affiliate unions. Prior to disaffiliation, Petitioner represented two separate crafts in a single affiliate union and carpenters and millwrights shared a chief steward. After disaffiliation, carpenters now share a chief steward with sheet metal workers while millwrights share a chief steward with machinists. In short, neither carpenters nor the millwrights appear to have actually lost much as far as the chief steward position is concerned.

Petitioner further argues that the carpenters and machinists do not trust their new trade representatives. Specifically, Petitioner speculates that the Sheet Metal Workers and Machinists, who have had jurisdictional disputes with Petitioner in the past, will take advantage of the new additions, but Petitioner has not presented any evidence to substantiate such speculation. Neither the welding pool nor the A-frame examples provided by Petitioner demonstrate any significant harm to the carpenters or millwrights.

In regard to the welding pool, as an initial matter, the record discloses that the welding pool no longer exists in practice, rendering changes in documents largely moot. Second, a distinction must be made between changes in Petitioner's role and the role of carpenters and millwrights. After disaffiliation, HAMTC clearly requested the Employer to remove references to Petitioner in a multitude of documents. However, it does not consequently follow that this removal led to any significant changes as far as the 21 carpenters' and millwrights' respective work is concerned. Indeed, the record reveals insufficient evidence to establish the nature and extent of changes argued by Petitioner in this regard.

Moreover, the A-frame grievance example is of minimal support to Petitioner's argument. Faced with the first jurisdictional grievance submitted by millwrights, the Machinists utilized HAMTC's internal process to resolve a dispute in what, by all appearances, was good faith. Representatives of the carpenters and millwrights testified that it was less than a total victory, but the evidence is mixed and does not support the conclusion that the Machinists somehow inappropriately traded away millwright work to another HAMTC craft.

I recognize that the jurisdictional concerns of the carpenters and millwrights are arguably reasonable, as the record does contain evidence of long running disputes, up to and including arbitration, on issues such as the assembling of metal furniture and installation of metal items on walls. However, carpenters and millwrights have these jurisdictional disputes with sheet metal workers and machinists because they are the trades with whom they respectively have much in common. Further, Petitioner faults HAMTC for its placement of carpenters and millwrights respectively with the Sheet Metal Workers and Machinists. However, conversely, it does not seem preferable to place carpenters and millwrights with trades with whom they rarely interact based on a fear of potential jurisdictional disputes. Indeed, under the circumstances, it is equally reasonable to place carpenters with the Sheet Metal Workers and millwrights with the Machinists, as these two trades respectively understand carpenters and millwrights better than the other trades' understand the petitioned-for group.

The record reveals that the labor history of the petitioned-for carpenters and millwrights as part of the existing unit has been predominantly stable. Petitioner has raised only potential concerns and has not produced any evidence establishing anything near inappropriate or unfair representation at any time relevant herein. Indeed, 65 years of Intervenor serving as the umbrella organization for the various trades reveals all involved parties have created a relationship conducive to avoiding and resolving work jurisdictional disputes in a fairly effective manner largely without disrupting work performed at Hanford. Thus, it is reasonable to conclude here that permitting severance of the carpenters and millwrights from the existing unit would be destabilizing to the involved parties and their many decades of a predominantly stable bargaining relationship.

Based on the above and the record as a whole, I find the history of collective bargaining weighs against Petitioner meeting its heavy burden of demonstrating craft severance is appropriate in the circumstances of this case.

3. Separate Identity

The facts in regard to separate identity in this case are similar to those present in *Kaiser Foundation,* 312 NLRB at 936, where the Board found that the unit had not maintained a separate identity given that terms and conditions of employment, including hours of work, holidays, health and pension benefits, vacation, seniority, and leave were uniformly applied across the unit.

As with previous factors, the strongest argument that carpenters and millwrights have in support of maintaining a separate identity is the preservation of their exclusive, albeit separate work jurisdictions. However, Petitioner again faces the problem that this argument equally demonstrates the separate identity the carpenters and millwrights have largely maintained from each other over the past 50 years at PNNL.

With the exception of their history of joint and limited representation by Petitioner, including carpenters and millwrights paying dues to Petitioner, nothing binds the carpenters and millwrights together that does not also largely apply to the remaining portion of the existing unit.

Specifically, carpenters and millwrights have different wage rates and perform different work. Accordingly, when Petitioner asserts that carpenters and millwrights are properly placed together in the petitioned-for unit, it is presumably relying on commonalities such as shared insurance and retirement benefits, vacation and holidays, working hours and shift schedules, and being subject to the same work rules. However, these shared commonalities are equally shared by the remaining employees in the existing unit with the petitioned-for group.

As would perhaps be expected in a workplace where most work is performed within exclusive jurisdictions, transfers between crafts are not common, supporting Petitioner's position. However, I note that other factors, such as joint supervision on functionally integrated multi-craft teams weigh against the Petitioner's argument on this factor.

Indeed, the record reveals that the Employer's recognition of exclusive jurisdictions is the functional limit of the separate identities maintained by the trades at PNNL. In sum, the record reveals that this factor does not support the Petitioner's position.

4. Degree of Integration of the Employer's Production Processes

The Employer's multi-craft work teams present a significant opportunity for integrated work while still respecting jurisdictional lines. The examples in the record, from door installation to fire inspections reveal much of the maintenance department's work involves multi-step projects requiring multiple crafts. This is clearly reflected in the Employer's organization of the multi-craft work teams. Such an organizational structure is only efficient and effective apparently over all these years if the multi-craft teams are actually performing a large number of tasks that require more than one craft. Indeed, the record supports this conclusion. Multiple employees testified that they work in conjunction with other trades on a daily basis, and the Employer and HAMTC maintain the Craft Alignment Program. Further, the record reveals some un-quantified but regular temporary transfers of craft employees between the multi-craft teams based on work or need. Thus, the record establishes the work of existing unit employees is functionally integrated to a relatively high degree.

Based on the foregoing and the record as a whole, I find the employer's organization of integrated multi-craft work teams performing tasks requiring multiple crafts under shared supervision, does not support Petitioner's position that craft severance is appropriate.

5. Qualifications of the Union Seeking Severance

Petitioner has extensive experience with the employees in the petitioned-for unit as an affiliate union in HAMTC, and Petitioner's parent organizations have extensive experience representing maintenance units in general. Intervenor argues that this factor does not support Petitioner's argument because it has never represented the petitioned-for employees as an exclusive collective bargaining representative. I do not find Intervenor's argument persuasive. First, this cannot be the standard applied to qualification, for if Petitioner was the exclusive collective bargaining representative, it would not need to file the instant petition. Second, the experience Petitioner has in representing the carpenters and millwrights, conducting regular meetings, electing officers, managing dues, and representing its member crafts in jurisdictional disputes and Appendix A bargaining, are sufficient qualifications to represent the carpenters and millwrights at PNNL.

In view of the above and the record as a whole, I find this factor favors Petitioner's position.

6. The History and Pattern of Collective-bargaining in the Industry

The record reveals that the Employer is involved in a unique industry, and other Department of Energy laboratories provide the best comparisons. At these laboratory facilities, metal trade councils represent a single maintenance bargaining unit. Petitioner asserts, in attempting to distinguish these facilities, that PNNL performs less defense industry research than other Department of Energy facilities or laboratories. However, Petitioner did not submit evidence to support this assertion, as the record contains scant evidence of the work performed at PNNL, and only a brief summary of the work performed at the other comparator laboratories.

As for Petitioner's attempt to distinguish the substance of these comparable laboratories' collective bargaining agreements, I do not find this convincing with regard to this factor. Clearly the collective bargaining agreements from other comparable laboratories differ in some ways from the HAMTC agreements. However, the question posed by *Mallinckrodt* is instead the pattern of collective bargaining in the industry, and Petitioner provides no case support for the proposition this factor turns on the precise terms and conditions set forth in other proffered labor agreements. Petitioner's argument is also inconsistent, as it faults Intervenor's labor agreement comparison on a substantive basis, but then offers a comparison, the Washington State Ferry system's labor agreement, which similarly includes many substantive differences in terms and conditions of employment from the HAMTC agreements.

Petitioner further argues the Washington State Ferry system is the proper industry for comparison, on the basis that carpenters in a production and maintenance unit at that facility, previously bargaining as part of a metal trades council, split from the council and have now bargained two contract cycles independently. Petitioner asserts the comparison is apt because a public ferry system has a vested interest in labor peace and because the unit performs maintenance work at multiple locations. I do not find these arguments persuasive relative to the evidence and arguments offered by HAMTC.

On the basis of the foregoing and the record as a whole, I find that this factor does not favor Petitioner's position in this case.

C. CONCLUSION REGARDING CRAFT SEVERANCE

Having examined the six *Mallinckrodt* factors in turn, I find that all but one weigh against Petitioner meeting its heavy burden of demonstrating craft severance is appropriate in the circumstances of this case. Consistent with *Mallinckrodt, Kaiser Foundation,* and *Metropolitan Opera,* I further find that Petitioner has failed to demonstrate compelling circumstances that would necessitate disturbing a bargaining unit where there has been a 50-year history of continuous, stable, and productive bargaining.

I recognize that I am reaching a different conclusion here than that reached by the Regional Director in *Electric Boat Corp.,* 01–RC–124746, addressed by both Petitioner and Intervenor. In that case, the Regional Director granted severance to carpenters and millwrights from a larger production and maintenance unit in a shipyard setting. Here, the facts presented are significantly different, including, critically, that in *Electric Boat* the two crafts in question were in a separate department and were separately supervised. Further, the stable, long, and productive bargaining history here is different from the history present in *Electrical Boat Corp.* In sum, the decision in Case 01–RC–124746 is not binding on me in the instant case. Moreover, Case 01–RC–124746 is before the Board and, therefore, has no precedential value. See *Boeing* Co., 337 NLRB 152, 153, fn. 4 (2001).

IV. DECISION

In the sections above, I have set forth the record evidence and an analysis of that evidence relative to the Board's *Mallinckrodt* standard that is applicable in cases of this nature. After analyzing the six factors constituting the *Mallinckrodt* standard, I find that the unit sought by Petitioner cannot be severed out of the existing unit as a separate craft unit, because only one of six factors supports Petitioner. Accordingly, I find that the existing Employer-wide maintenance unit is the unit appropriate for bargaining. However, Petitioner has declined to go forward to an election in any unit other than the petitioned-for unit. Thus, I shall order dismissal of the instant petition.

V. ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.